

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.**

CWP No.12324 of 2007
Date of decision: 20.08.2007

Navdeep Singh @ Goldi.

-----Petitioner

Vs.

Punjab State Election Commission & Ors.

-----Respondents

**CORAM:- HON'BLE MR JUSTICE ADARSH KUMAR GOEL
HON'BLE MR JUSTICE AJAI LAMBA**

Present: Mr. M.L. Saggar, Sr. Advocate with
Mr. S.S. Behl, Advocate
for the petitioner.

Mr. Kanwaljit Singh, Sr. Advocate with
Mr. Harmanjit Singh, Advocate
for respondents.

Adarsh Kumar Goel, J.

This petition seeks quashing of order dated 8.8.2007, Annexure P-11, ordering fresh poll in nine booths of Ward No.29.

Case of the petitioner is that notification under Section 35 of the Punjab State Election Commission Act, 1994 was issued for elections to the Municipal Corporations. On 8.8.2007, polling took place. Ward No.29 had nine polling booths. At Polling Booth No.6, defect occurred in the Electronic Voting Machine (EVM). Counting of votes in the nine booths took place on the same day. The results of eight booths were declared and in respect of booth No.6, it was

reported that counting of votes could not be done as EVM stopped functioning at 2.05 P.M. without completing the polling. On account of this, impugned order, Annexure P-11, was passed by the State Election Commission, holding that since polling held at Polling Booth No.6 was void, in all booths of Ward No.29, repolling be held on 12.8.2007 between 8.00 A.M. to 4.00 P.M.

On 10.8.2007, while issuing notice, this Court passed the following order:-

“Petitioner was a candidate in Ward No. 29 in election to the Members of Municipal Corporation, Amritsar. It is apparent from the record that Ward No. 29 was bifurcated into nine polling stations. In polling station No. 6, voting was conducted, however, at the time of counting, the Electronic Voting Machine could not be decoded. Votes were counted so far as other polling stations of that Ward are concerned. Petitioner secured 2808 votes whereas, second candidate got 2409 votes. When the Presiding Officer failed to count the votes in polling station No.6, case was recommended for conducting re-polling in that polling station. However, the State Election Commissioner has ordered that re-polling be conducted in Ward No. 29, which mean in other 8 polling stations also. Counsel states that the order passed to that extent is not justified.

Notice of motion for 20.08.2007.

Re-polling, except in polling station No. 6 of Ward No. 29 shall remain stayed, till further orders.

Copy of the order be given dasti on payment of usual charges.”

We have heard learned counsel for the parties and perused the record.

It could not be disputed that except Polling Station No.6, there being no defect in polling machines in other polling stations which were part of Ward No.29, there was no reason to order repolling.

Only contention raised on behalf of respondent No.6 is that repolling of the entire Ward was necessary for secrecy and in view of observations made by this Court in **Dhan Pat v. The State of Haryana and others** AIR 1994 P&H 19.

We are of the view that the judgment relied upon is not applicable to the present situation. In that case, repoll for election of Sarpanch was ordered. The reason was that acid was thrown on the ballot box, destroying the ballots. The Presiding Officer sent a report to the Deputy Commissioner, who ordered repoll. It was held that counting of ballot papers of three polling booths had been concluded and after the trend of result having become known, if repoll was ordered only at one polling booth, the contestants would have bargained for the votes in order to succeed at the booth and this justified repoll of all the booths.

In the present case, allegation of the petitioner is that order of repoll was not bonafide as votes of eight out of nine booths had

already been counted and the result was in favour of the petitioner. With regard to ninth polling booth i.e. Booth No.6, out of 666 votes 552 votes had already been polled and without making an effort to decode the EVM, repoll of the entire wards was recommended. Under Section 59(2), polling at a polling station could be declared void and fresh poll could be ordered, instead of repoll of all the polling stations in the Ward.

In the facts of the present case, it is not necessary to go into the question, whether in a given case, repoll of all the polling booths could be ordered as was the situation in the judgment relied upon in **Dhan Pat** (*supra*). In the present case, result of eight polling booths having already been declared and having regard to the voting pattern, there could be no justification for ordering repoll of all the polling stations on the ground of defect in EVM at Polling Station No.6.

Accordingly, we make the interim order dated 10.8.2007 absolute and dispose of the writ petition in terms thereof.

(ADARSH KUMAR GOEL)
JUDGE

August 20, 2007
ashwani

(AJAI LAMBA)
JUDGE